

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE  
(December 3, 1997 Session)

**FILED**  
**March 18, 1998**  
**Cecil W. Crowson**  
**Appellate Court Clerk**

DAVID RICHARDS,	)	MAURY CIRCUIT
	)	
Plaintiff-Appellee,	)	Hon. Jim T. Hamilton,
	)	Judge.
v.	)	
	)	No. 001S01-9706-CV-00131
SATURN CORPORATION,	)	
	)	
Defendant-Appellant.	)	

For Appellant:

Thomas H. Peebles  
Brian A. Lapps  
Mark W. Peters  
Waller, Lansden, Dortch & Davis  
Columbia, Tennessee

For Appellee:

J. Anthony Arena  
Schulman, LeRoy & Bennett  
Nashville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court  
William H. Inman, Senior Judge  
Joe C. Loser, Jr., Special Judge

AFFIRMED AS MODIFIED

Loser, Judge

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The appellant states the issues as follows:

1. "Whether the trial court improperly granted Plaintiff's Motion to Permit Additional Proof after entering a final order of judgment;
2. "Assuming arguendo that the trial court properly granted Plaintiff's Motion to Permit Additional Proof, whether the proof introduced at both trials preponderates against the trial court's finding that Plaintiff was one hundred percent occupationally disabled; and
3. "Whether the "Amended Final Order" entered by the trial court inaccurately reflected the trial proceeding."

Fairly stated, the issue is whether the evidence preponderates against an award of permanent partial disability based on one hundred percent to both arms and in favor of a lesser award. As discussed below, the panel has concluded the judgment should be modified.

This trial began on May 8, 1996 and was taken under advisement after both sides rested on May 8, 1996. On May 28, 1996, the plaintiff applied for leave to reopen its proof. The next day, the trial judge, apparently without having seen the motion to reopen, entered an order awarding the claimant permanent partial disability benefits based on twenty-percent to the body as a whole. The motion was argued two days later, on May 31, 1996, and was granted by an order entered on June 17, 1996. Thereafter, additional proof was allowed and, on December 19, 1996, the trial court entered an amended final order allowing an additional eighty percent permanent partial disability to both arms.

The appellant argues the trial judge abused his discretion by reopening the proof and that the amended judgment was void for lack of subject matter jurisdiction. Since the motion to reopen was timely made, the panel concludes the trial court had jurisdiction, in the exercise of its discretion, to reopen the proof. Moreover, we find no abuse of that discretion. The first issue is resolved in favor of the appellee.

The employee or claimant, Richards, is thirty-eight years old, who has worked for General Motors since 1977. He began working for Saturn in 1993 and was, at that time, in excellent physical condition. From repetitive use of his hands on the production line, he gradually developed chronic overuse syndrome of both arms.

As a result, he is unable to perform any job requiring the use of power tools or be placed in any of the present job openings at Saturn. He has thus been placed by Saturn on long term disability leave of absence. The employer concedes the injury is work related.

Dr. Paul Parsons, who treated the claimant, opined by deposition on February 27, 1996 that the claimant was not permanently impaired. Dr. David Gaw, who examined the claimant, assessed a permanent medical impairment rating of ten percent to both arms and advised him to permanently

avoid repetitive gripping, squeezing, lifting or manipulating with his hands. The testimony of Dr. Gaw was also by deposition.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review. Kellerman v. Food Lion, Inc., 929 S.W.2d 333 (Tenn. 1996) The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676-77. The extent of an injured worker's disability is an issue of fact. Jaske v. Murray Ohio Mfg. Co., 750 S.W.2d 150 (Tenn. 1988).

Once the causation and permanency of an injury have been established by expert testimony, the trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability, and job opportunities for the disabled, in addition to anatomical impairment, for the purpose of evaluating the extent of a claimant's permanent disability. Hill v. Royal Ins. Co., 937 S.W.2d 873 (Tenn. 1996). The opinion of a qualified expert with respect to a claimant's clinical or physical impairment is a factor which the court will consider along with all other relevant facts and circumstances, but it is for the courts to determine the percentage of the claimant's industrial disability. Kellwood Co. v. Gibson, 581 S.W.2d 645 (Tenn. 1979).

From a consideration of those factors, to the extent they were established by the evidence in the case, and of the above principles of law, the panel finds the evidence to preponderate against the award of permanent disability benefits based on one hundred percent to both arms and in favor of one based on thirty-five percent permanent partial disability to both arms.

The third issue, whether the "Amended Final Order" entered by the trial court inaccurately reflected the trial proceeding, is deemed moot in light of the resolution of the second issue. As modified, the judgment of the trial court is affirmed. The case is remanded to the Circuit Court for Maury County. Costs are taxed to the parties, one-half each.

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Joe C. Loser, Jr., Special Judge

CONCUR:

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Lyle Reid, Associate Justice

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William H. Inman, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

**FILED**

March 18, 1998

**Cecil W. Crowson  
Appellate Court Clerk**

DAVID RICHARDS,	}	MAURY CIRCUIT
	}	No. 60 Below
Plaintiff/Appellee	}	
	}	Hon. Jim T. Hamilton,
vs.	}	Judge
	}	
SATURN CORPORATION,	}	No. 01S01-9706-CV-00131
	}	
Defendant/Appellant	}	AFFIRMED AS MODIFIED.

JUDGMENT ORDER

*This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.*

*Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and*

*It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.*

*Costs will be paid one-half by Plaintiff/Appellee and one-half by Defendant/Appellant and Surety, for which execution may issue if necessary.*

*IT IS SO ORDERED on March 18, 1998.*

PER CURIAM